

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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2024:PHHC:018961-DB
LPA-621-2022 (O & M)
Date of Decision: 12.02.2024

Karnail Singh Brar

.....Appellant(s)

Versus

State of Punjab and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Sunny Singla, Advocate, for the appellant.

Mr. Saurav Khurana, Addl. A.G., Punjab.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. Consideration in the present letters patent appeal is to the order passed by the Single Judge in CWP-7317-2022 on 18.05.2022 whereby, the claim of the writ petitioner for fixing of his pensionary benefits on the last drawn pay basis on which he was working on current duty charge has been denied by the learned Single Judge while dismissing the writ petition. The learned Single Judge distinguished the judgment passed in ***CWP No. 17358 of 2015, Jagdish Singh and others vs. State of Punjab and others decided on 09.09.2016*** which was further upheld in ***LPA-37-2017, State of Punjab and others vs. Jagjit Singh and others on 25.09.2018*** (Annexure P-9). Reliance was placed upon the judgment of the Apex Court in ***Writ Petition (C) No.300 of 2016, K. Sreedhar Rao vs. UOI through Secretary, Ministry of Law & Justice, New Delhi decided on 06.09.2019*** by noting that the employee is entitled for fixation of the pensionary benefits keeping in view the substantive rank held and not that of the current duty charge. Thus, the view taken in *Jagdish Singh's case (supra)*, which was upheld in LPA-37-2017, was distinguished by holding that the pensionary benefits could only be fixed by taking into consideration the

2. A perusal of the order dated 31.08.2018 which was under challenge (Annexure P-1 in the writ petition) would go on to show that the employee had worked as DDO, Block Primary Education Officer, Malout from 25.08.2004 to 31.05.2005. Thus, his claim in the writ petition was that he was eligible to draw pension for the post of the BPEO @ Rs.8,925/- per month as he had apparently retired on 31.05.2005 while working as BPEO as opposed to a Centre Head Teacher where he drew salary of Rs.8,650/- per month. Due to the impugned order, the last salary of the employee drawn by him at the time of holding current duty charge was not to be counted for pensionary benefits and the pensionary benefits were held to be payable as per his substantive post and salary, which led to the filing of the writ petition.

3. It is to be noticed that from 2005 till 2021, the writ petitioner did not seek any redressal and had only filed his representation on 19.05.2021 (Annexure P-3) and has slept over his rights. Limited benefits were granted vide the impugned order dated 31.08.2018 wherein it was ordered that if after counting the period of the current duty charge, the benefit of ACP and at the time of current duty charge, the basic scale of higher post is given, then in that case, whichever is higher i.e from ACP or current duty charge would be payable to the employee. The effect was given on 18.10.2018 (Annexure P-6). Accordingly, bolstered by the said fact, the writ petition was filed even seeking pension on account of the fact that he worked on the higher post and had retired from it which has been rightly rejected by the learned Single Judge.

4. Similar view has been taken by the same learned Single Judge in ***CWP-456-2020, Vinod Kumar and others vs. State of Haryana and another*** which was decided alongwith ***CWP-2666-2018, Pardeep Narayan vs. State of Haryana and another on 31.10.2018***. The claim as such for pensionary benefits on the basis of the current duty charge was denied. The employees

filed **LPA-486-2023, Tek Chand and others vs. State of Haryana and another**, which was **dismissed on 28.04.2023** by holding as under:-

“Notice of motion.

Ms. Shruti Jain Goyal, DAG, Haryana, accepts notice on behalf of the State-respondents.

This Letters Patent Appeal is preferred against judgment dt.31.10.2022 of the learned Single Judge in CWP-456-2020 to the extent the learned Single Judge had not granted relief to the appellants.

He had rejected their claim for fixation of pensionary benefits on the ground that they had been given current duty charge of the Higher Post of Superintendent, though they were holding the substantive rank of Deputy Superintendent on the basis of last pay drawn by them while officiating in the said higher position.

The learned Single Judge, in the impugned judgment, has taken the view rightly that for fixation of pension, the substantive rank held by the employees had to be seen and not the officiating rank.

Admittedly, the substantive rank of the petitioners would only be that of Deputy Superintendent and merely because they were given current duty charge of the higher post of Superintendent, they cannot claim to have been regularly promoted to the said position. So, notwithstanding the period they have discharged the duties of the office of Superintendent as current duty charge, they cannot claim any pensionary benefits on the said basis.

So, we do not find any merit in the appeal.

Accordingly, the appeal is dismissed.”

5. Once the co-ordinate Bench has upheld the said principle, we do not find any plausible reasons to take a different view. Rather, a closer reading of **LPA-37-2017, Jagjit Singh's case (supra)** would go on to show that there were peculiar facts and circumstances in the said case which prevailed with the

had been promoted as Principal/Headmaster/Headmistress on regular basis and the State had conceded their claim for fixation of pension and other retiral benefits as per the last pay drawn by them. In respect of the remaining 14 other writ petitioners, it was noticed that several posts of Principal/Headmaster/Headmistresses which were meant to be filled up by promotion from amongst Lecturer/Master/Mistresses were lying vacant and the promotion quota had not been exhausted apparently for the reasons like pendency of seniority dispute. Since regular promotions could not be made and most of the senior most persons were asked to officiate on the promotional posts and had unfortunately retired from service without getting formal tag of regular promotion, the order passed by the learned Single Judge entitling them to pension and other retiral benefits as per the last pay drawn by them on such higher posts was upheld. It was also held that the State could not take undue advantage of their own inaction or wrongs and seniority is a condition of service and the authority should have evolved some mechanism to grant regular promotions to senior most Lecturer/Master/Mistresses for promotion which was also a legitimate expectation in service career. Thus, it is in such circumstances, the said view had been taken.

6. Resultantly, we are of the considered opinion that there is no merit in the present appeal and we endorse the view which has been taken in *Tek Chand's case (supra)* and the present appeal accordingly stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

12.02.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No